

# Exhibit A

**From:** Ellsworth, Felicia H felicia.ellsworth@wilmerhale.com  
**Subject:** RE: SFFA v. Harvard  
**Date:** August 3, 2015 at 4:35 PM  
**To:** Patrick Strawbridge patrick@consovoymccarthy.com  
**Cc:** Wolfson, Paul Paul.Wolfson@wilmerhale.com, William Consovoy will@consovoymccarthy.com, Paul Sanford psanford@burnslev.com, Benjamin Caldwell bcaldwell@burnslev.com, Thomas McCarthy tom@consovoymccarthy.com, Michael Park park@consovoymccarthy.com, Michael Connolly mike@consovoymccarthy.com



Patrick,

My client is out of the office this week, so it will not be possible to respond by the end of the day as your email demands. I would note, however, that your email simply reiterates the request for discovery on your motion to compel, to which Harvard already responded last week.

Felicia

**Felicia H. Ellsworth | WilmerHale**  
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**From:** Patrick Strawbridge [mailto:patrick@consovoymccarthy.com]  
**Sent:** Monday, August 03, 2015 11:00 AM  
**To:** Ellsworth, Felicia H  
**Cc:** Wolfson, Paul; William Consovoy; Paul Sanford; Benjamin Caldwell; Thomas McCarthy; Michael Park; Michael Connolly  
**Subject:** Re: SFFA v. Harvard

Felicia:

Your response is insufficient. The issue is not whether Harvard can continue to withhold production of documents in hopes of a stay it has not yet received. The issue is providing the Court with accurate and complete information so it can decide the pending motion to compel.

Your refusal to provide even the most basic information — a list of the fields in a database — that Harvard obviously was able to produce for the benefit of its own expert's declaration has led to an absurd situation: Harvard presumes to tell SFFA's expert what he needs to do his own analysis, while also refusing to provide any of the underlying information that would help settle that question.

Given Harvard's refusal to respond in a reasonable manner to our simple request, I ask that you confirm (or, if necessary, clarify) the following points on behalf of your client, so both parties can be confident that the Court is not misled:

**1) That the “one year” of data that Mr. McCrary refers to in paragraph 18 of his declaration is, in fact, the data captured by Harvard’s electronic application system (known as Slate) during the Class of 2019 admissions cycle.**

**2) That the “more than 900 fields” of data Mr. McCrary refers to do not, in fact, exist in database form for any application year prior to the Class of 2019. This means that Harvard’s admissions database contains substantially fewer fields, and substantially less content from the applications, for the application cycles that were the subject of SFFA’s RFP # 24.**

**3) That even the data Mr. McCrary reviewed for the Class of 2019 does not contain the text of the personal statements or teacher recommendations for the applicants that year.**

Answers to these simple questions are essential to addressing the accuracy and completeness of the information Harvard has provided to the Court. If Harvard is unwilling to provide confirmation or any necessary clarification of these questions by the end of the day, we will inform the Court of Harvard’s resistance to clarifying these important factual points.

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On Jul 31, 2015, at 1:37 PM, Ellsworth, Felicia H  
<[felicia.ellsworth@wilmerhale.com](mailto:felicia.ellsworth@wilmerhale.com)> wrote:

Patrick,

As I have previously indicated, Harvard does not believe it is appropriate to produce documents pending the Court’s ruling on Harvard’s motion for a stay in light of *Fisher II*. In light of the Court’s comments at last week’s status conference, we expect Judge Burroughs to issue a ruling on that motion in fairly short order, and Harvard will proceed accordingly based on that ruling. In any event, we disagree that this information is required to litigate SFFA’s motion to compel production of 6,400 applicant files, and believe the Court has sufficient information to adjudicate the dispute based on the briefing and declarations provided by both parties’ experts. In the alternative, if SFFA would prefer to ask the Court to hold its motion to compel in abeyance pending a ruling on the motion to stay, Harvard would assent to such a request.

Harvard will consent to your request to file a reply brief in support of the motion to compel, and assume that SFFA will extend the parallel courtesy to Harvard in the future. If

compel, and assume that SFFA will extend the parallel courtesy to Harvard in the future. If after reviewing your reply brief we feel it is necessary to seek leave to file a sur-reply, we will seek your consent for that filing at the appropriate time.

Felicia

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**From:** Patrick Strawbridge [<mailto:patrick@consvoymccarthy.com>]  
**Sent:** Thursday, July 30, 2015 6:42 PM  
**To:** Ellsworth, Felicia H  
**Cc:** Wolfson, Paul; William Consovoy; Paul Sanford; Benjamin Caldwell; Thomas McCarthy; Michael Park; Michael Connolly  
**Subject:** SFFA v. Harvard

Felicia:

I write to request that Harvard produce for SFFA's immediate review: (1) the portion of Harvard's admissions database that identifies all of the fields, as well as any guidebook or other information necessary to understand the contents of the database; and (2) the applicant-specific entries for the four rejected applicants who are members of SFFA, identified in SFFA's supplemental response to Harvard's interrogatories. This information has already been requested by SFFA, and Harvard has agreed to produce it. The reliance on this information in support of the opposition to SFFA's Motion to Compel makes its production essential to the litigation of that motion, so that SFFA and the Court may ascertain the accuracy of Harvard's assertion that the database contains all the information its expert needs to conduct his analysis.

To expedite this request, SFFA agrees that one designated administrative person in the admissions office may retrieve this information for production, provided that he/she (1) executes the attachment to the protective order agreeing to be bound by its terms (including the obligation not to share this information with any other Harvard employees) and (2) take reasonable steps to prevent other admissions employees from discovering the identity of those applicants.

Concurrent with this request, we ask for your consent for SFFA to file a reply, not to exceed 10 pages, to Harvard's Opposition to the Motion to Compel.

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